

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

RICHARD DIVER,

Defendant.

No. 19-CR-533 (LAP)

ORDER

LORETTA A. PRESKA, UNITED STATES DISTRICT JUDGE:

Defendant Richard Diver is scheduled to be sentenced in person on December 7, 2020, after he pleaded guilty on February 12, 2020 to investment adviser fraud, in violation of 15 U.S.C. §§ 80b-6 and 80b-17, and wire fraud, in violation of 18 U.S.C. § 1343. On November 30, 2020, however, Chief Judge McMahon issued a standing order--effective December 1, 2020--suspending all in-person proceedings in the Southern District of New York until January 15, 2021. See In re Coronavirus/COVID 19 Pandemic, M-10-468 (CM), (S.D.N.Y. Nov. 30, 2020). Under that order, "[a]ll criminal matters, including . . . sentencings, will be conducted remotely, unless (1) the defendant[] declines to waive the right to be physically present, and (2) the court concludes that the matter cannot be postponed, in conformity with the CARES Act." Id. at 1.

Mr. Diver has informed the Court, as is his right, that he declines to waive the right to be physically present in court for his sentencing. The Coronavirus Aid, Relief, and Economic

Security Act ("CARES Act") only authorizes remote proceedings for felony sentencings if the defendant consents. See Pub. L. No. 116-136, § 15002(b)(4), 134 Stat 281, 529 (2020). Moreover, the Court finds that, with each passing day, Mr. Diver's sentencing--which has already been thrice adjourned, (see dkt. nos. 27, 29, 30)--continues to delay the resolution of a civil case brought against Mr. Diver by his former employer and victim, M&R Capital Management, Inc. (See dkt. no. 40 in 19-CV-4821 (staying the case as to all claims against Mr. Diver).) Accordingly, the Court concludes that Mr. Diver's sentencing "cannot be further delayed without serious harm to the interests of justice." CARES Act, § 15002(b)(2)(A), 134 Stat at 529.

For these reasons, the Court concludes that Mr. Diver's sentencing cannot be conducted remotely under either the CARES Act or Chief Judge McMahon's standing order. As a result, Mr. Diver's sentencing will proceed, as scheduled, on December 7, 2020 at 9:15 a.m. in Courtroom 12A of the Daniel Patrick Moynihan United States Courthouse at 500 Pearl Street, New York, New York 10007.

SO ORDERED.

Dated: December 2, 2020
New York, New York


LORETTA A. PRESKA, U.S.D.J.